



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,931	04/20/2006	Neil Macfarlane	DSM-08-US	2810
50446 7590 01/08/2010 HOXIE & ASSOCIATES LLC 75 MAIN STREET, SUITE 301 MILLBURN, NJ 07041				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
01/08/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,931

Applicant(s)

MACFARLANE, NEIL

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendrick (EP 0999259) in view of Going (3,186,854) taken with Haroldsson and the admitted state of the prior art for reasons of record.

Applicant argues that the rejection is improper because the references applied against the claims are disparate and the reasoning for the combination was not articulated. Applicant's comments regarding the quality of the written rejection have been considered and are disagreed with and are not sufficient to overcome the rejection of the claims.

Applicant argues that Kendrick is directed to marine oils and not to ethyl esters. This has been considered but is not persuasive. Claims 1, 2, 5-14, 16-21 do not require ethyl esters to be included in the process. Triglycerides, commonly known as oils, are known in the art to be glycerol

esters of fatty acids. With regard to claims 3 and 4, the claims further differ from Kendrick in the recitation of the treatment of ester concentrates of fatty acids. Kendrick is directed to the treatment of triglycerides. But the ester concentrates would be expected to react like triglycerides in a stabilization process because the fatty acid portion of the triglyceride molecule is the part of the compound that becomes susceptible to oxidation. Applicant himself utilized Kendrick's process in a pilot study but applicant did not try the composition which Kendrick's discovered to result in the highest rancimat induction time (eg samples 2, 3 and last sample).

Applicant argues that Kendrick and Going are not combinable because they are related to differing subjects. Both Going and Kendrick's are related to edible oil blends, as note the similar titles. Going is relied upon to teach that lecithin is a crystallization inhibitor. It is appreciated that a crystallization inhibitor is not mentioned in Kendrick, but one of ordinary skill in the art would be expected to use a crystallization inhibitor in an edible oil treating process to prevent solidification of the oil upon cold storage.

Applicant argues that Haraldson does not address the odor problem associated with enzymatically produced mixtures of esters. This has been

considered but is not persuasive. Haraldson is not the only reference relied upon in the rejection. Kendericks shows odors associated with stabilized and unstabilized polyunsaturated fatty acids in Tables 1 to 5. Further the claims are not directed to a method of creating or diminishing odor. The claims are directed to a method of stabilizing esters of polyunsaturated fatty acids and a method of enriching foods with polyunsaturated fatty acids.

The rejection of the claims under 35 USC 112, first paragraph has been withdrawn for the reasons argued by applicant.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory

period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/576,931
Art Unit: 1794

Page 6

/Carolyn Paden/

Primary Examiner 1794